

**A CONVENTION ON PREVENTION
AND PUNISHMENT OF CRIMES
AGAINST HUMANITY:
FURTHER RECOMMENDATIONS**

SUBMISSION TO ALL MEMBER AND OBSERVER STATES OF
THE UNITED NATIONS



**AMNESTY
INTERNATIONAL**



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In this briefing, Amnesty International submits, for consideration by all UN member and observer states and with a view to the first Preparatory Committee and the Working Group for the United Nations Conference of Plenipotentiaries on Prevention and Punishment of Crimes against Humanity, which will meet from 19 to 30 January 2026, and possible submissions by governments to the UN Secretary-General, no later than 30 April 2026, of proposals for amendments to the International Law Commission (ILC) Draft Articles on Prevention and Punishment of Crimes against Humanity, these *Further Recommendations* on a future Convention on Prevention and Punishment of Crimes Against Humanity. While the organization believes that the ILC Draft Articles of 2019 are a good basis to open negotiations on a future Convention, UN member and observer states should consider ways to further strengthen the future Convention. The present *Further Recommendations* are to be read in conjunction with Amnesty International's *General Recommendations to States for a Convention on Prevention and Punishment of Crimes against Humanity* (Index: IOR 40/6497/2023).

I. INTRODUCTION

Amnesty International welcomes the adoption in December 2024 of Resolution 79/122¹ by the United Nations General Assembly (UNGA) to advance to formal negotiations over a Convention on the Prevention and Punishment of Crimes against Humanity. Once concluded and adopted, this treaty will strengthen the framework of international justice by providing new tools and better enabling states to cooperate with each other in combatting impunity for crimes against humanity.

Resolution 79/122 sets out that the International Law Commission's (ILC) [Draft Articles on Prevention and Punishment of Crimes Against Humanity](#) (Draft Articles),² as well as a compilation of proposals for amendments to the Draft Articles to be submitted by governments by 30 April 2026, will serve as the basis for negotiations.³ Amnesty International believes that the ILC Draft Articles are a good basis to open negotiations on a future Convention. At the same time, as previously stated, some provisions would benefit from amendment, because they are flawed, not adequate for the purposes of fighting impunity, or fail to reflect the highest standards of international law.⁴

Amnesty International shares these *Further Recommendations* with participating states during the 80th session of the UNGA Sixth Committee in October and November 2025, at which “Crimes against humanity” is again an item on the provisional agenda. Further, the first Preparatory Committee for the Conference and the Working Group will meet from 19 to 30 January 2026. Finally, governments may submit proposals for amendments of the Draft Articles to the UN Secretary-General by 30 April 2026.

The recommendations raised in this paper are to be read in conjunction with and as complementary to Amnesty International's [General Recommendations](#) of March 2023,⁵ all of which are part of the organization's advocacy efforts for this Convention, without being exhaustive. These *Further Recommendations* stem in part from discussions and developments in international forums, including the Sixth Committee's Resumed Sessions in 2023 and 2024,⁶ and discussions within civil society over the past two years.

These *Further Recommendations* reflect that, cutting across the future Convention on the Prevention and Punishment of Crimes against Humanity, victims and survivors' rights are robustly protected; gender justice is advanced;⁷ crimes against humanity against children are effectively recognized; and attempts to weaken the effectiveness of the future Convention through procedural or other caveats are rejected.

¹ UN General Assembly, Resolution 79/122, *United Nations Conference of Plenipotentiaries on Prevention and Punishment of Crimes against Humanity*, adopted on 4 December 2024, UN Doc. [A/RES/79/122](#).

² **UN International Law Commission (ILC)**, Report on the Work of Its Seventy-First Session, UN Doc. [A/74/10](#), adopted on 9 August 2019, Chapter IV, Crimes against humanity.

³ UNGA Resolution 79/122, 2024 (previously cited), OPs 5 and 9.

⁴ Amnesty International, *General Recommendations to States for a Convention on Prevention and Punishment of Crimes Against Humanity: UN GA Sixth Committee First Resumed Session on the Draft Articles on Prevention and Punishment of Crimes against Humanity (New York, 10-14 April 2023)*, (Index: IOR 40/6497/2023), section 1.

⁵ Amnesty International, *General Recommendations* (previously cited).

⁶ UN General Assembly, Resolution 77/249, *Crimes against Humanity*, adopted on 30 December 2022, UN Doc. [A/RES/77/249](#) (co-sponsored by 86 states).

⁷ See also, Global Justice Center, *Joint Call to Advance Gender Justice in the Draft Crimes Against Humanity Convention*, 5 October 2023, https://www.globaljusticecenter.net/wp-content/uploads/2023/10/Letter-to-UN-Member-States-Re_-Gender-Justice-Approach-to-Crimes-Against-Humanity-Treaty.pdf

In overview, Amnesty International recommends in this submission:

Section below	Recommendations
1. Civil society participation	<ul style="list-style-type: none"> The 2026 Preparatory Committee should enable full, effective and broad civil society participation in the negotiations, with recognition of due geographical representation and gender parity, including that also NGOs and other civil society actors without ECOSOC consultative status are invited to submit requests to participate in the Conference, including the Preparatory Committee, the Working Group and any other related forums, and are able, should they so choose, to do so in-person.
2. Centering victims and survivors	<ul style="list-style-type: none"> State should ensure inclusive, effective and meaningful participation of victims and survivors in the negotiations. Victims and survivors' rights should be robustly protected and set out throughout the future Convention. Draft Article 12 should contain an explicit and clear definition of the term "victim", sufficiently broad to encompass all persons who suffer harm from acts that constitute crimes against humanity.
3. Crimes	
3.1 Sexual and other gender-based crimes	<ul style="list-style-type: none"> States should maintain the omission of a definition of gender in the future Convention. States should recognize and incorporate gender apartheid as a crime against humanity in the future Convention. States should codify forced marriage as a distinct crime against humanity in the future Convention. States should explicitly recognize reproductive violence in the definition of crimes against humanity in the future Convention, for example through expanding the residual clause of Draft Article 2(1)(g)). States should delete the last sentence in Draft Article 2(2)(f) and substitute "woman" with more inclusive language in the definition of forced pregnancy in the future Convention.
3.2 Slave trade	<ul style="list-style-type: none"> States should codify the slave trade as a distinct crime against humanity in the future Convention.
3.3 Persecution and enforced disappearance	<ul style="list-style-type: none"> States should remove the expression "in connection with any act referred to in this paragraph" contained in Draft Article 2(1)(h). States should remove the expression "with the intention of removing them from the protection of the law for a prolonged period of time" from Draft Article 2(2)(i).
4. The obligation to prevent	<ul style="list-style-type: none"> States should maintain the text of Draft Articles 3(2) and 4.
5. Establishment and exercise of jurisdiction	<ul style="list-style-type: none"> States should maintain the text of Draft Articles 7, 9(3), 10 and 13(12)-(13) and reject attempts to undermine these provisions.
6. Justice for children	<ul style="list-style-type: none"> The future Convention should include a definition that a child is anyone under the age of 18; expressly recognize that crimes against humanity are committed against them, including persecution and forced marriage; and provide for their access to justice, protection and reparations.
7. Settlement of disputes	<ul style="list-style-type: none"> Draft Article 15 should be revised in a way that ensures prompt and effective access to its dispute settlement process, including a strict time limit on negotiations, and compulsory acceptance of ICJ's jurisdiction.

II. RECOMMENDATIONS TO STATES

1. CIVIL SOCIETY PARTICIPATION

The original draft resolution for adoption in the Sixth Committee⁸ provided that the Conference and the Preparatory Committee would also be open to – apart from UN member states, specialized agencies and UNGA and other IGO observers – non-governmental organizations (NGOs) in consultative status with the Economic and Social Council (ECOSOC) as well as “other relevant non-governmental organizations, civil society organizations, academic institutions and the private sector” that, subject to conditions, could submit requests to participate in the Conference. However, the relevant draft paragraph was deleted from the resolution text eventually adopted by the Sixth Committee⁹ and later the UNGA in its Resolution 79/122, and the decision on “the participation of stakeholders other than those” with ECOSOC accreditation was deferred to the first session of the Preparatory Committee. In effect, this means that – at present – NGOs without an existing ECOSOC accreditation may not be able to attend the eventual Conference, unless the Preparatory Committee decides otherwise.

Amnesty International believes that the nature and cause of the negotiations for the future Convention on Prevention and Punishment of Crimes against Humanity necessitates as wide a civil society participation as possible in the Conference, the Preparatory Committee, the Working Group and any other related meetings. In our view, this also follows from Resolution 79/122 itself, which calls for “developing an instrument enjoying the broadest possible support” (OP 4) and “the need to ensure the widest possible and effective participation in the Conference” (OP 13). Such an approach would also contribute to having a fair and balanced representation of observers, including geographically, and an open, inclusive and transparent treaty-making process. An international instrument like the planned Convention, addressing one of “the most serious crimes of concern to the international community as a whole”,¹⁰ can only benefit from wide civil society engagement. This understanding had been recognized and implemented already in the context of the 1998 Rome Statute Preparatory Commission and during the actual Rome Conference.¹¹ The views of victims and survivors¹² need to be heard through participation at the negotiations, as well as, for example, the views of children’s representatives,¹³ alongside civil society representatives more generally, in particular from those countries that are particularly affected by the commission of crimes against humanity. Acquiring new ECOSOC accreditation in the time available before the Conference would be all but impossible for many respective organizations.

The widest possible participation, including of NGOs without ECOSOC status, would also be in line with recent UN and other international practice:

- In the negotiations of the UN Convention against Cybercrime adopted in December 2024,¹⁴ civil society, academic institutions and the private sector were permitted to contribute to the respective work of the relevant Ad Hoc Committee. This included NGOs with and without existing ECOSOC consultative status, in order to allow contributions by “those with expertise in the field ... taking into account the principles of transparency and equitable geographical representation, with due regard for gender parity”.¹⁵

⁸ UN General Assembly, Sixth Committee, *United Nations Conference of Plenipotentiaries on Prevention and Punishment of Crimes against Humanity*, UN Doc. [A/C.6/79/L.2/Rev.1](#).

⁹ UN General Assembly, Sixth Committee, *Crimes against Humanity, Report of the Sixth Committee*, UN Doc. [A/79/470](#).

¹⁰ ILC, *Draft Articles on Prevention and Punishment of Crimes Against Humanity* (previously cited), PP 5.

¹¹ NGOs could be granted observer access by ad hoc invitation.

¹² See below section 2.

¹³ See below section 6.

¹⁴ UN General Assembly, Resolution 79/243, *Strengthening International Cooperation for Combating Certain Crimes Committed by Means of Information and Communications Technology Systems and for the Sharing of Evidence in Electronic Form of Serious Crimes*, adopted on 24 December 2024, UN Doc. [A/RES/79/243](#).

¹⁵ UN General Assembly, Resolution 75/282, *Countering the use of information and communications technologies for criminal purposes*, adopted on 26 May 2021, UN Doc. [A/RES/75/282](#). OPs 8 and 9 of that resolution read, respectively: “8. *Reaffirms* that representatives of non-governmental organizations that are in consultative status with the Economic and Social Council, in accordance with Council resolution 1996/31 of 25 July 1996, may

- Likewise, for the High-level Conference on the Situation of Rohingya Muslims and Other Minorities in Myanmar in September 2025, organizations without ECOSOC consultative status wishing to participate could apply for an ad hoc special accreditation, among others to ensure the meaningful participation of women and youth.¹⁶
- The most recent comparable global treaty in international justice, the Ljubljana-The Hague Convention on mutual legal assistance for international crimes,¹⁷ was adopted after a diplomatic conference in Ljubljana in May 2023 in which civil society organizations could actively participate through interventions, including by addressing plenary and Working Group sessions.¹⁸ This inclusive and participatory approach, set out in the rules of procedure of that conference, was credited as crucial for the passage of the treaty in a way that progresses international justice and accountability.¹⁹
- Outside the area of international justice, in recent years inclusive civil society participation, with more openness, transparency and stakeholder involvement, has been seen by conveners as essential to the development of international treaties, one example being the UNCLOS Agreement on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (the BBNJ Agreement) adopted in June 2023.²⁰

Amnesty International advocates for UN processes to be inclusive and participatory, as well as representative, diverse, broad, meaningful and safe for civil society, including from historically marginalized and underrepresented groups. An effective, purposeful and victim and survivor-centred Convention must allow meaningful participation for those most affected, among others. Robust and constructive civil society engagement has contributed to getting to this start of formal negotiations and is essential to their success. A framework limiting civil society participation to those with a formal status at the UN would only serve as a barrier to entry for the negotiations and could undermine the broad acceptance of the eventual Convention. Amnesty International therefore calls for the re-introduction of an accreditation option for NGOs without consultative ECOSOC status and other representative stakeholders and giving them the same rights of participation, including to effectively address formal meetings, as those observers already admitted.

Amnesty International also reminds states that civil society participation at the Conference must be effectively and practically possible, including in-person participation if desired. Hybrid and remote participation are useful where warranted and should be facilitated as an additional option but cannot fully replace in-person participation. At the moment, the Diplomatic Conference is to meet in New York in 2028 and 2029 “unless otherwise agreed by the Preparatory Committee”; the Preparatory Committee is to meet in 2026 and 2027, also in New York. If circumstances make in-person participation by civil society representatives from all UN member and observer states in New York

register with the secretariat in order to participate in the sessions of the Ad Hoc Committee; 9. *Requests* the Chair of the Ad Hoc Committee, in consultation with the United Nations Office on Drugs and Crime, to draw up a list of representatives of other relevant non-governmental organizations, civil society organizations, academic institutions and the private sector, including those with expertise in the field of cybercrime, who may participate in the Ad Hoc Committee, taking into account the principles of transparency and equitable geographical representation, with due regard for gender parity, to submit the proposed list to Member States for their consideration on a non-objection basis 2 and to bring the list to the attention of the Ad Hoc Committee for a final decision by the Ad Hoc Committee on participation” [emphasis in original].

¹⁶ UN General Assembly, Resolution 79/278, *Scope, modalities, format and organization of the High-level Conference on the Situation of Rohingya Muslims and Other Minorities in Myanmar*, adopted on 25 March 2025, UN Doc. [A/RES/79/278](#). OPs 8 and 9 of that resolution read, respectively: “8. *Invites* non-governmental organizations that are in consultative status with the Economic and Social Council to register with the Secretariat to attend the High-level Conference; 9. *Requests* the President of the General Assembly to draw up a list of representatives of other relevant non-governmental organizations, civil society organizations, think tanks and academic institutions, who may participate in the High-level Conference, taking into account the principle of transparency, with due regard for gender parity and youth representation, to submit the proposed list to Member States for their consideration on a non-objection basis 2 and to bring the list to the attention of the Assembly for a final decision by the Assembly on participation in the High-level Conference” [emphasis in original].

¹⁷ [Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and other International Crimes](#), adopted in Ljubljana, Slovenia, on 26 May 2023. The convention has been ratified by one state (Latvia) and signed by 39 other states.

¹⁸ Under the [Rules of Procedure](#), civil society, upon invitation, could attend the conference as one group of ‘observers’ (Rule 3), which gave them the rights of attendance, receipt of official documents, and to make statements (subject to invitations and approvals).

¹⁹ Priya Pillai, “Symposium on Ljubljana – The Hague Convention on Mutual Legal Assistance: Critical Reflections – Lessons Learned: Civil Society Engagement in Treaty Negotiations”, *Opinio Juris*, 4 August 2023, <https://opiniojuris.org/2023/08/04/symposium-on-ljubljana-the-hague-convention-on-mutual-legal-assistance-critical-reflections-lessons-learned-civil-society-engagement-in-treaty-negotiations/>

²⁰ See Ambassador Rana Lee (Singapore), *Reaching Shore – Multilateralism and the Value of International law*, The 2023 Dag Hammarskjöld Lecture, Uppsala, 16 September 2024, <https://www.daghammarskjold.se/wp-content/uploads/2024/12/2023-lecture-rena-lee-digital.pdf>

factually impossible, the Preparatory Committee should consider moving one or more sessions of the Conference to an alternative venue.

Recommendation:

- The 2026 Preparatory Committee should enable full, effective and broad civil society participation in the negotiations, with recognition of due geographical representation and gender parity, including that also NGOs and other civil society actors without ECOSOC consultative status are invited to submit requests to participate in the Conference, including the Preparatory Committee, the Working Group and any other related forums, and are able, should they so choose, to do so in-person.

2. CENTERING VICTIMS AND SURVIVORS IN THE CONVENTION

2.1 SURVIVOR-CENTRED APPROACH

States must take a survivor-centred approach when considering the future Crimes Against Humanity Convention, as recommended by civil society groups, including Amnesty International.²¹ A survivor-centred approach prioritizes survivors' rights.

Such an approach requires victims and survivors to be engaged in the making of the treaty and to participate in decisions that affect them, in line with international human rights law principles.²² States and other stakeholders must ensure that participation is robust, inclusive, non-discriminatory, genuine, effective and meaningful, and starts at the national level. States should support survivors' participation and information as needed, and refrain from hindering or retaliating against their participation. Particular efforts should be made to safeguard representation of diverse victims and survivor groups, including groups facing discrimination and survivors of violations who might be stigmatized or marginalized, such as survivors of sexual violence and other gendered harms.²³

2.2 PROVISIONS ON VICTIMS AND REPARATIONS

A survivor-centred approach furthermore requires an explicit definition that is a sufficiently broad and clear of who qualifies as "victims" and not leaving this to states' sole discretion. As previously stated,²⁴ Amnesty International recommends that the future Convention text contains a definition of the term "victim", as included in various relevant treaties.²⁵ A good and widely accepted approach to follow is that set out in Rule 85 of the Rules of Procedure and Evidence of the ICC and, to some extent, Article 81 of Ljubljana-The Hague Convention.²⁶ Duly adapted, such a provision would recognize as victims natural persons who have suffered harm, and in certain situations organizations or institutions that have sustained direct harm to their property.

In addition, the reparations provisions in the ILC Draft Articles (Draft Article 12(3)) should be broadened and clarified to ensure all victims and survivors of crimes against humanity have access to prompt, full and effective reparations.²⁷ The right to reparation should not only be accessible for those pursuing judicial proceedings but also incorporate the establishment of complementary reparations

²¹ Amnesty International and others, *Joint Briefing: Draft Crimes Against Humanity Convention Must Center Victims and Survivors* (Index: IOR 40/7463/2023), <https://www.amnesty.org/en/documents/ior40/7463/2023/en/>

²² UN General Assembly, Resolution 40/34, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, adopted on 29 November 1985, UN Doc. *A/RES/40/34*, para 6 (c). See also, UN Human Rights Committee, *General Comment 25: The right to participate in public affairs, voting rights and the right of equal access to public service (article 25)* (1996), UN Doc. *CCPR/C/21/Rev.1/Add.7*.

²³ *Joint Briefing: Victims and Survivors* (previously cited).

²⁴ Amnesty International, *General Recommendations* (previously cited), section 14; Amnesty International, *17-Point Program for a Convention on Crimes against Humanity*, (Index: IOR 51/7914/2018), section 14.

²⁵ Among others, the International Convention for the Protection of All Persons from Enforced Disappearance, (adopted on 20 December 2006, entered into force 23 December 2010), 2716 UNTS 3, Article 24(1); and the Convention on Cluster Munitions (adopted on 30 May 2008, entered into force 1 August 2010), Article 2(1), contain examples that could be of inspiration for a future Convention. See also, Amnesty International, *General Recommendations* (previously cited), section 14.

²⁶ See above section 1; Article 81(2) of that convention limits the application of the definition codified in Article 81(1) to one "in accordance with domestic law".

²⁷ See UN General Assembly, Resolution 60/147, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, adopted on 16 December 2005, UN Doc. *A/RES/60/147*, Section IX; see also, UNGA, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (previously cited).

mechanisms,²⁸ such as civil, administrative, or disciplinary proceedings and programs.²⁹ Similarly to the provisions on “victims”, those on reparations should also centre on the *harm* suffered by victims and survivors.³⁰

Recommendations:

- State should ensure inclusive, effective and meaningful participation of victims and survivors in the negotiations.³¹
- Victims and survivors’ rights should be robustly protected and set out throughout the future Convention.
- Draft Article 12 should contain an explicit and clear definition of the term “victim”, sufficiently broad to encompass all persons who suffer harm from acts that constitute crimes against humanity.

3. CRIMES – DEFINITIONS AND NEW CRIMES

The ILC Draft Articles for the most part imported the list and definitions of crimes against humanity as laid out in Article 7 of the Rome Statute. This choice was part of the ILC’s approach to make the Draft Articles more likely to be accepted by states. However, the crimes as listed in the Rome Statute were always meant only as a common baseline (“a floor, not a ceiling”³²). Amnesty International believes that, more than 27 years after the adoption of the Rome Statute, a careful revision of the catalogue of crimes set out there for purposes of this new Convention would, while remaining true to this fundamental basis of international criminal law, enable the recognition of newer developments in international law, including through the ICC’s own jurisprudence, and continue the gradual evolution of international criminal law.

Approaching crimes against humanity in the Convention from today’s viewpoint is especially needed when it comes to sexual and other gender-based crimes, to increase awareness for this type of crimes, to enable all survivors of sexual violence to have their rights upheld, and to make sure that any future convention reflects the highest standards of international law. In this light, Amnesty International agrees with the ILC’s decision not to include a definition of gender in Draft Article 2; joins calls to add gender apartheid, forced marriage and reproductive violence as separate crimes; and reiterates the call to revise the provision on forced pregnancy.

Amnesty also joins calls to add the slave trade as a separately enumerated crime. Finally, Amnesty reiterates its view that provisions on the crimes against humanity of persecution and enforced disappearance should be amended.

3.1 SEXUAL AND OTHER GENDER-BASED CRIMES

3.1.1. Abrogation of definition of gender

As Amnesty International has previously stated, the organization welcomes the decision by the ILC not to maintain the definition of gender contained in Article 7(3) of the Rome Statute in the Draft Articles.³³ That definition risks being interpreted to conflate gender with sex,³⁴ and such conflation fails to fully acknowledge and reflect the social construction of gender and the “accompanying roles,

²⁸ Amnesty International, *General Recommendations* (previously cited), pp. 19-20.

²⁹ See for example, UN Committee on the Elimination of Discrimination against Women, *General Recommendation 35 (2017) on gender-based violence against women, updating general recommendation No. 19*, 27 July 2017, UN Doc. CEDAW/C/GC.35, para. 31(b): “all legal proceedings, protective and support measures and services”; see also, UN Commission on Human Rights, *Updated Set of Principles for the protection and promotion of human rights through action to combat impunity*, 8 February 2025, UN Doc. E/CN.4/2005/102/Add.1.

³⁰ *Joint Briefing: Victims and Survivors* (previously cited), sections II and III.

³¹ See above section 2.

³² Leila N. Sadat, “Custom, Codification and Some Thoughts about the Relationship between the Two: Article 10 of the ICC Statute”, 2000, DePaul L. Rev. Volume 49, Issue 4, p. 919, via.library.depaul.edu/cgi/viewcontent.cgi?article=1666&context=law-review

³³ Amnesty International, *General Recommendations* (previously cited), section 3.

³⁴ Article 7(3) of the Rome Statute defines gender as “the two sexes, male and female, within the context of society” and stipulates that “[t]he term ‘gender’ does not indicate any meaning different from the above.”

behaviours, activities, and attributes assigned to women and men, and to girls and boys.”³⁵ In addition, several laws implementing the Rome Statute into national law have omitted such a flawed definition.³⁶

3.1.2. Gender apartheid

In addition to the crime of apartheid contained in Draft Article 2(1)(j), the future Convention should recognize and incorporate “gender apartheid” as a crime against humanity. This recognition would address a significant gap in international law, which presently fails to adequately acknowledge, prevent and punish inhumane acts committed in the context of an institutionalized regime of systemic domination and oppression on the basis of gender.³⁷ Amnesty joins respective calls by women’s rights defenders, UN experts, international lawyers and others.³⁸

Recognition of the crime against humanity of gender apartheid is necessary to be able to name and combat such forms of oppression of women, girls and LGBTI people that may exist now or in the future; to respond appropriately to its gravity; to give a mandate for its investigation and prosecution; and to end the denial of dignity, freedom and equality to its victims. There is no other phenomena or crime in international law that recognizes an institutionalized and ideological pattern of domination and oppression as the concept of apartheid does.

3.1.3. Forced marriage

Over the last 16 years, forced marriage has been recognized as a crime against humanity by a range of international tribunals, most consistently as the crime of “other inhumane acts”.³⁹ This jurisprudence has also recognized that forced marriage entails unique elements and resulting harms that distinguish it from other enumerated sexual and other gender-based crimes, including rape and sexual slavery.⁴⁰ The ICC Trial Chamber has found that the distinctive element of forced marriage, resulting in unique harms, consists in:

³⁵ See, for example, UN Experts, *Re: Comments to the Draft Crimes Against Humanity Convention*, 30 November 2018, <https://www.ohchr.org/sites/default/files/Documents/Issues/Executions/LetterGender.pdf>; OutRight Action International, MADRE and others, Open Letter to the International Law Commission, *Re: “Gender” in the Draft Crimes against Humanity Convention*, 3 December 2018, <https://www.madre.org/wp-content/uploads/2023/08/MADREs-Open-Letter-on-Draft-CAH-Treaty.pdf>. See also, International Criminal Court, Office of the Prosecutor, *Policy Paper on Sexual and Gender-Based Crimes*, June 2014, www.icc-cpi.int/sites/default/files/iccdocs/otp/OTP-Policy-Paper-on-Sexual-and-Gender-Based-Crimes--June-2014.pdf

³⁶ See, for example, Code pénal France, Articles 212-1 à 212-3; Chile, Ley 20.357 of 18 July 2009 (Official Gazette); Burkina Faso, Loi N°025-2018/AN, portant Code pénal, 31 May 2018; Congo (Republic of), Loi N°8 - 98, 31 October 1998; Dominican Republic, Código Penal, Ley No. 550-14, 19 December 2014; Korea (Republic of), Act on Punishment of Crimes under Jurisdiction of the International Criminal Court, Act No.8719, 21 December 2007, amended by Act No. 10577, 12 April 2011.

³⁷ Amnesty International, “Gender apartheid must be recognized as a crime under international law,” 17 June 2024, <https://www.amnesty.org/en/latest/news/2024/06/gender-apartheid-must-be-recognized-international-law/>; Sareta Ashraph and others, “Why the Crimes Against Humanity Treaty Should Codify Gender Apartheid,” 5 October 2023, Just Security, <https://www.justsecurity.org/89193/why-the-crimes-against-humanity-treaty-should-codify-gender-apartheid/>

³⁸ See for example, End Gender Apartheid, Sareta Ashraph and others, Joint legal brief, *Amending the Crime Against Humanity of Apartheid to Recognize and Encompass Gender Apartheid*, 5 October 2023, <https://endgenderapartheid.today/download/2025/EGA%20Legal%20Brief.pdf>; UN Human Rights Council, *Draft articles on prevention and punishment of crimes against humanity – Recommendations from the Working Group on discrimination against women and girls*, 15 February 2024, UN Doc. A/HRC/WG.11/40/1; Global Justice Center & Atlantic Council, “Joint Call to Amend the Draft Crimes against Humanity Convention to Encompass Gender Apartheid,” 5 October 2023, <https://www.globaljusticecenter.net/wp-content/uploads/2023/10/Gender-Apartheid-Expert-Legal-Brief-CAH-Treaty.pdf>

³⁹ See, for example, ICC, *Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Case ICC-01/12-01/18, Trial Chamber judgment, 26 June 2024 (“*Al Hassan Trial judgment*”); ICC, *Prosecutor v. Dominic Ongwen*, Case ICC-02/04-01/15-2022-Red, Appeals Chamber judgment, 15 December 2022, para. 1024 (“*Ongwen Appeal judgment*”); ICC, *Prosecutor v. Dominic Ongwen*, Case ICC-02/04-01/15-1762-Red, Trial Chamber judgment, 4 February 2021, para. 2751 (“*Ongwen Trial judgment*”); Special Court for Sierra Leone (“SCSL”), *Prosecutor v. Alex Tamba Brima et al.*, Case SCSL-2004-16-A, Appeals Chamber judgment, 22 February 2008, paras 197-201 (“*Brima et al Appeal judgment*”); SCSL, *Prosecutor v. Sesay, Kallon and Gbao*, Case SCSL-04-15-T, Trial Chamber judgment, 2 March 2009, paras 1464, 1473 (“*RUF Sesay Trial judgment*”); SCSL, *Prosecutor v. Sesay, Kallon and Gbao*, Case SCSL-04-15-A, Appeals Chamber judgment, 26 October 2009, paras 726, 849, 861-862 (“*RUF Sesay Appeal judgment*”); Extraordinary Chambers in the Courts of Cambodia (“ECCC”), *Prosecutors v. Nuon Chea and Khieu Samphân*, Case 002/19-09-2007/ECCC/TC, Trial Chamber judgment, 16 November 2018, paras 741,4172, 4198, 4303-4305 (“*Chea and Samphân Trial judgment*”); ECCC, *Prosecutors v. Khieu Samphân*, Case 002/19-09-2007-ECCC/SC, Supreme Court Chamber judgment, 23 December 2022, paras 1444-1591.

⁴⁰ *Brima et al.* Appeal judgment, para. 195; *Ongwen Trial judgment*, paras 2747-2750; ICC, *Prosecutor v. Dominic Ongwen*, Case ICC-02/4-01/15, Pre-Trial Chamber, Decision on the confirmation of charges, 23 March 2016, paras 92-95. See also, Valerie Oosterveld and others, Joint Brief, *The Draft Crimes Against Humanity Convention and Forced Marriage*, 5 October 2023, <https://www.globaljusticecenter.net/the-draft-crimes-against-humanity-convention-and-forced-marriage/>

*“the imposition of this status on the victim, i.e. the imposition, regardless of the will of the victim, of duties that are associated with marriage – including in terms of exclusivity of the (forced) conjugal union imposed on the victim – as well as the consequent social stigma”.*⁴¹

Codifying forced marriage as a distinct crime would not only improve legal certainty by avoiding repeated challenges to charges of forced marriage – claiming that it is not expressly listed within the definition of crimes against humanity – and thereby enhance the chances of prosecutions and convictions, but also make the crime more visible and serve as an important recognition of the specific and grave harms of this crime and the lived experiences of victims and survivors.⁴²

3.1.4. Reproductive violence

Amnesty International subscribes to the view that Draft Article 2(1)(g) insufficiently captures the many forms of sexual and reproductive violence that warrant recognition as crimes against humanity.⁴³ The organization believes that, among others, the prevention of reproduction through forced abortion or forced contraception, and forced breastfeeding or forced “wetnursing” of another person’s infant, should be recognized as well.⁴⁴ If no specific crimes are added, this could be facilitated by expressing that *reproductive* violence is equally criminalized to *sexual* violence. The ICC has affirmed that reproductive autonomy constitutes a distinct legal interest protected under the Rome Statute,⁴⁵ and several national courts have recognized violations of reproductive autonomy as war crimes and/or crimes against humanity.⁴⁶ The future Convention presents an opportunity to expressly acknowledge the distinct harms and gravity of suffering caused by such violations through, at a minimum, the inclusion of the words “or any other form of sexual *or reproductive* violence of comparable gravity” in Draft Article 2(1)(g).

3.1.5. Forced pregnancy

The organization reiterates that the sentence referring to national laws in the definition of forced pregnancy,⁴⁷ retained from Article 7(2)(f) of the Rome Statute, serves no legal purpose and should be removed.⁴⁸ As the ICC Appeals Chamber has confirmed, this reference does not add an additional element to the crime and was only inserted in the Rome Statute “*to alleviate the concerns raised by some States that the forced pregnancy provision might be interpreted as interfering with the States’ approach to abortion.*”⁴⁹ Removing this unnecessary reference to national laws from the existing definition of forced pregnancy would therefore be in line with ICC jurisprudential developments.

⁴¹ *Ongwen* Trial judgment, para. 2748.

⁴² Joint Briefing, *The Draft Crimes Against Humanity Convention and Forced Marriage* (previously cited), p. 2: “In each case prosecuted, defendants have questioned the validity of recognizing forced marriage because it is not an explicitly listed prohibited act under the crimes against humanity provision of the courts’ respective statutes.”

⁴³ Amnesty International and others, *Draft Articles on Prevention and Punishment of Crimes Against Humanity Should Advance Justice for Reproductive Autonomy: Joint Briefing* (Index IOR 40/7461/2023), 5 October 2023, <https://www.amnesty.org/en/wp-content/uploads/2023/11/IO4074612023ENGLISH.pdf>

⁴⁴ Amnesty International and others, *Draft Articles Should Advance Justice for Reproductive Autonomy* (previously cited), para. 2.

⁴⁵ *Ongwen* Trial Judgment, para. 2717; *Ongwen* Appeal judgment, paras 1055 and 1063.

⁴⁶ See, for example, Tribunal Militaire de Garnison D’Uvira (Military Garrison Court Of Uvira), *Democratic Republic of the Congo v. Muyolo Mbawo Ndarumanga*, judgment RP 168772022, 15 May 2023; Corte Constitucional de Colombia Case No SU-599/19, judgment, 11 December 2019; Tribunal Superior de Bogotá, Sala de Justicia y Paz (Superior Tribunal of Bogotá, Justice and Peace Chamber), *Colombia v. Salvatore Mancuso Gómez and others*, Case 11 001 22 52 000 2014 00027, judgment, 20 November 2014; Tribunal Oral en lo Criminal Federal de Santa Fe (Federal Criminal Oral Court of Santa Fe), *Argentina v. María Eva Aebi, Juan Calixto Perizzotti, Ricardo Silvio Ramón Ferreyra, Oscar Alberto Farina*, judgment number 101/18, 16 October 2018; Tribunal Oral en lo Criminal Federal 3 (Federal Criminal Oral Court 3), *Argentina v. Bignone, Reynaldo Benito Antonio and others*, Case 9243/2007 (1818/15), judgment, 20 October 2018; Tribunal Primero de Sentencia Penal, Narcoactividad y Delitos contra el Ambiente (First Sentencing Tribunal on Criminal, Drug Trafficking and Environmental Offences), *Guatemala v. Esteelmer Francisco Reyes Girón, Heriberto Valdéz Asig*, Case C-01076-2012-00021, judgment, 26 February 2016.

⁴⁷ The definition of “forced pregnancy” in Draft Article 2(2)(f) includes the qualification that “[t]his definition shall not in any way be interpreted as affecting national laws relating to pregnancy.”

⁴⁸ Amnesty International and others, *Draft Articles Should Advance Justice for Reproductive Autonomy* (previously cited), para. 17; see also, Amnesty International, *Forced pregnancy: a commentary on the crime in international criminal law*, (Index: IOR 53/2711/2020), 29 June 2020 <https://www.amnesty.org/en/documents/ior53/2711/2020/en/>, section C.

⁴⁹ *Ongwen* Appeal judgment, para. 1065; *Ongwen* Trial judgment, para. 2721.

Furthermore, this sentence has not been replicated in the statutes of other international tribunals or in many national laws defining the crime of forced pregnancy.⁵⁰

Amnesty International further considers that the current definition of forced pregnancy in Draft Article 2(2)(f), which limits victims of this crime to “women,”⁵¹ risks impermissibly excluding other categories of people who are biologically capable of becoming pregnant.⁵² As the organization has previously stated,⁵³ if the essence of the crime of forced pregnancy is the denial of autonomy over a pregnancy by means of unlawful confinement – as confirmed by the ICC Appeals Chamber has affirmed⁵⁴ – then the crime must be applied to anyone who is pregnant who is subjected to such treatment. To do otherwise would be discriminatory.

Recommendations:

- States should maintain the omission of a definition of gender in the future Convention.
- States should recognize and incorporate gender apartheid as a crime against humanity in the future Convention.
- States should codify forced marriage as a distinct crime against humanity in the future Convention.
- States should explicitly recognize reproductive violence in the definition of crimes against humanity in the future Convention, for example through expanding the residual clause of Draft Article 2(1)(g).
- States should delete the last sentence in Draft Article 2(2)(f) and substitute “woman” with more inclusive language in the definition of forced pregnancy in the future Convention.

3.2 SLAVE TRADE

Amnesty International supports proposals advanced by civil society organizations and international lawyers to enumerate the slave trade as a distinct crime against humanity in the future Convention.⁵⁵ A large number of states also advanced this position in the UNGA Sixth Committee during the resumed sessions in 2023 and 2024.⁵⁶ The organization considers that the slave trade is an intrinsically distinct crime against humanity in terms of its constitutive elements; unique and grave harms; potential perpetrators; and affected victims. Although they frequently operate in tandem, enslavement and the slave trade are distinct and separate crimes under international law:⁵⁷ whereas enslavement consists of

⁵⁰ For example, statutes of several international tribunals established after the Rome Statute have excluded the national laws caveat, including the 2002 Statute of the Special Court for Sierra Leone and the 2003 Statute of the Iraqi Special Tribunal. A range of domestic penal codes have also codified forced pregnancy without the reference to national laws, including France, the Republic of Congo, the Czech Republic, Finland, Georgia, Lithuania, Montenegro, and Serbia.

⁵¹ Draft Article 2(2)(f) defines forced pregnancy as the “unlawful confinement of a woman forcible made pregnancy, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.”

⁵² Amnesty International and others, *Draft Articles Should Advance Justice for Reproductive Autonomy* (previously cited), paras 31-32.

⁵³ Amnesty International, *Forced pregnancy: a commentary on the crime in international criminal law* (previously cited), pp. 14-15.

⁵⁴ *Ongwen* Appeal judgment, para. 1055.

⁵⁵ See Global Justice Center, *Including the Slave Trade in the Draft Articles on Prevention and Punishment of Crimes Against Humanity*, 5 October 2023, <https://www.globaljusticecenter.net/including-the-slave-trade-in-the-draft-articles-on-prevention-and-punishment-of-crimes-against-humanity/>; Patricia Viseur Sellers and others, “Time to Enumerate the Slave Trade as a Distinct Provision in the Crimes Against Humanity Treaty”, Just Security, 15 November 2023, <https://www.justsecurity.org/90085/time-to-enumerate-the-slave-trade-as-a-distinct-provision-in-the-crimes-against-humanity-treaty/>

⁵⁶ Including Australia, Brazil, Colombia, El Salvador, Iceland, Mexico, the Netherlands, Nigeria, Palestine, the Philippines, Sierra Leone, the Syrian Arab Republic and the African Group. France, in so-called *Loi Taubira* (Taubira law) of 21 May 2001, officially recognized that the transatlantic slave trade and other historical forms of trafficking and slavery “constitute a crime against humanity”; 2021, France, Loi N°2001-434 du 21 mai 2001, article 1.

⁵⁷ This is evinced by the separate enumeration of both slavery and slave trade prohibitions in several international instruments, including the Convention to Suppress the Slave Trade (1926) 60 LNTS 254, entered into force on 9 March 1927 [“1926 Slavery Convention”], and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956), 266 UNTS 40, entered into force on 30 April 1957 [“1956 Supplementary Slavery Convention”].

the actual exercise of powers of ownership over a person or persons,⁵⁸ slave trade entails conduct by which a person is reduced to slavery or transferred from one situation of slavery to another.⁵⁹

A failure to expressly recognize and enumerate the slave trade as a separate crime against humanity, distinct from enslavement or sexual slavery, may create impediments to the effective prosecution of the slave trade and result in an impunity gap for perpetrators of the slave trade who do not also satisfy the elements of other already enumerated crimes against humanity.⁶⁰

Recommendation:

- States should codify the slave trade as a distinct crime against humanity in the future Convention.

3.3 PERSECUTION AND ENFORCED DISAPPEARANCE

Amnesty International considers that the definition of crimes in the future Convention should be at least as broad as the definitions in the Rome Statute, but whenever international treaties or customary international law contain broader definitions, the latter should be incorporated.

Two of the crimes against humanity set out in Draft Article 2, persecution and enforced disappearance, retain the *jurisdictional thresholds* of Article 7 Rome Statute. These additional *jurisdictional thresholds* are not to be found in the crimes' definitions under treaty law or customary international law. However, while states negotiating the Rome Statute may have wished to set supplemental restrictions to the ICC's material jurisdiction with regard to some crimes, these thresholds are inappropriate for a treaty that is to be applied primarily by states parties to the Convention in their own national courts. The future Convention should not include any definitions narrower than existing state duties under treaty or customary international law.

3.3.1. Persecution

Article 2(1)(h) of the Draft Articles demands that persecution be committed "in connection with any act referred to in this paragraph". As the organization has previously explained in detail, the crime against humanity of persecution should be an autonomous crime, independent of any other crime against humanity.⁶¹ The particularly heinous form of discrimination inherent in persecution in itself warrants international criminalization. Several states also advanced this position in the UNGA Sixth Committee.⁶² In addition, many states, while enacting legislation implementing the Rome Statute into national law, have considered that no "connection requirement" for the crime against humanity of persecution is necessary.⁶³

In particular, making persecution dependent on the commission of other crimes against humanity may be one reason why this crime has been little prosecuted. Even where sufficient evidence of the denial of fundamental rights against a group based on their collective identity exists,⁶⁴ prosecutions of persecution under the framework of the Rome Statute are foreclosed unless this evidence is

⁵⁸ 1926 Slavery Convention, Article 1(1); Rome Statute, Articles 7(1)(c) and 7(2)(c); ICC Elements of Crimes, 2 November 2000, UN Doc. PCNICC/2000/1/Add.2, Article 7(1)(c) -1; International Criminal Court, Office of the Prosecutor, *Policy on Slavery Crimes*, December 2024, <https://www.icc-cpi.int/sites/default/files/2024-12/policy-slavery-web-eng.pdf>

⁵⁹ 1956 Supplementary Slavery Convention, Article 7(c). Slave trade therefore contemplates acts which precede enslavement, such as the capture, abduction, kidnapping or transfer of any person or persons for purposes of enslavement, as well as the transport, transfer, sale or exchange of an enslaved person from one situation of slavery to another, without claiming actual powers of ownership. ICC Office of the Prosecutor, *Policy on Slavery Crimes* (previously cited), para. 68.

⁶⁰ Patricia V. Sellers and Jocelyn G. Kestenbaum, "Missing in Action: The International Crime of the Slave Trade," 2020, *Journal of International Criminal Justice*, Volume 18, pp. 517-542.

⁶¹ Amnesty International, *The problematic formulation of persecution under the Draft Convention on crimes against humanity* (Index: IOR 40/9248/2019), 30 October 2018, <https://www.amnesty.org/en/documents/ior40/9248/2018/en/>

⁶² Including Argentina, Australia, Brazil, Colombia, Lebanon, Malta, the Netherlands, Palestine, Portugal.

⁶³ Amnesty International, *The problematic formulation of persecution* (previously cited), p. 9.

⁶⁴ Amnesty International has called for an investigation into the crime against humanity gender persecution in Afghanistan, Nigeria, and Iraq; see, respectively, Amnesty International, *The Taliban's war on women: The crime against humanity of gender persecution in Afghanistan* (Index: ASA 11/6789/2023), May 2023; *They Betrayed Us: Women who survived Boko Haram raped, starved and detained in Nigeria* (Index: AFR 44/8415/2018), May 2018; "Yezidi women and girls face harrowing sexual violence", 23 December 2014; see also UN CEDAW Committee, "Gender persecution: Institutionalized violations of women's human rights in Afghanistan", 15 February 2024.

accompanied by sufficient admissible evidence of the commission of additional crimes against humanity. Until recently, the prosecution of especially gender persecution has been rare, and no conviction has occurred.⁶⁵ This reduces a crucial remedy to victims, particularly those belonging to groups subject to systemic discrimination or marginalization, such as women, LGBTI persons and racialized groups, who are at higher risk of persecution.

Separately, adding age as a specific ground in relation to the crime of persecution would increase the likelihood of charges brought by prosecutors for example when children are specifically targeted.⁶⁶

3.3.2. Enforced disappearance

There is no need that Draft Article 2(2)(i) includes the restrictive language of Article 7(2)(i) of the Rome Statute, which require the perpetrator of an act of enforced disappearance to have had the double “intention” of removing a person from the protection of the law and doing so “for a prolonged period of time.” This proposal was supported in the UNGA Sixth Committee by several states.⁶⁷

Such requirements are absent in the definition of the crime contained in the International Convention for the Protection of All Persons from Enforced Disappearance (CPED), as well as in the 1992 Declaration on the Protection of all Persons from Enforced Disappearance.⁶⁸ Furthermore, it is well-established that the removal of a person from the protection of the law is not part of the actus reus of enforced disappearance but a consequence of the respective acts.⁶⁹ Removing these requirements from Draft Article 2(2)(i) would also align with the treaty obligations states parties to the CPED already bear and facilitate implementation of the future Convention.

Recommendation:

- States should remove the expression “in connection with any act referred to in this paragraph” contained in Draft Article 2(1)(h).
- States should remove the expression “with the intention of removing them from the protection of the law for a prolonged period of time” from Draft Article 2(2)(i).

4. THE OBLIGATION TO PREVENT

Prevention of crimes against humanity is one of the two overall obligations, together with punishment, that the future Convention would seek to set out,⁷⁰ and one important aspect in which it would go beyond the Rome Statute.⁷¹ Amnesty International believes that the relevant provisions in the Draft Articles constitute a good starting point for the negotiations, and at the very least should be preserved. However, the organization also believes that some improvements can be made.

⁶⁵ International Criminal Court, Office of the Prosecutor, *Policy on the Crime of Gender Persecution*, December 2022, <https://www.icc-cpi.int/sites/default/files/2022-12/2022-12-07-Policy-on-the-Crime-of-Gender-Persecution.pdf>, Executive Summary. In the case of *Prosecutor v. Al Hassan*, persecution on both gender and religious grounds were charged and confirmed, for the first time, but in June 2024 the ICC Trial Chamber convicted only on the latter. In July 2025, the ICC issued arrest warrants against Taliban officials for the crime against humanity of gender persecution against women, girls, and LGBTI people, and persecution on political grounds against persons perceived as “allies of girls and women”.

⁶⁶ See below section 6. In addition, some civil society actors suggest the addition of “disability” to the grounds of persecution; see Janet Lord and others, “The U.N. Process for a Crimes Against Humanity Treaty Has Finally Started. Will It Account for Persons with Disabilities”, *Just Security*, 26 May 2023, <https://www.justsecurity.org/86724/the-u-n-process-for-a-crimes-against-humanity-treaty-has-finally-started-will-it-account-for-persons-with-disabilities/>

⁶⁷ Including Algeria, Argentina, Brazil, Chile, Colombia, El Salvador, Italy, Portugal, the Netherlands.

⁶⁸ UNGA, Resolution 47/133, *Declaration on the Protection of all Persons from Enforced Disappearance*, adopted on 18 December 1992, UN Doc. A/RES/47/133. See also Amnesty International, *No impunity for enforced disappearances: Checklist for effective implementation of the International Convention for the Protection of All Persons from Enforced Disappearance* (Index: IOR/006/2011), 9 November 2011, <https://www.amnesty.org/en/documents/ior51/006/2011/en/>

⁶⁹ Amnesty International, *General Recommendations* (previously cited), section 2.

⁷⁰ ILC, *Draft Articles on Prevention and Punishment of Crimes Against Humanity* (previously cited), Preamble, paras 5-6.

⁷¹ Brenda Nanyunja and Vito Todeschini, “The ‘Obligation to Prevent’ in a Future Crimes Against Humanity Convention”, *Just Security*, 27 September 2024, <https://www.justsecurity.org/100036/crimes-against-humanity-obligation-prevent/>

4.1 THE GENERAL OBLIGATION TO PREVENT (ARTICLE 3(2))

The obligation to prevent is one among other *general* state obligations listed in Draft Article 3. The ILC has clarified that Draft Article 3(2) requires states to “employ the means at their disposal” to prevent crimes against humanity and:

*“to use [their] best efforts (a due diligence standard) when [they have] a ‘capacity to influence effectively the action of persons likely to commit, or already committing’ the acts, which in turn depends on the State party’s geographic, political and other links to the persons or groups at issue.”*⁷²

Given Draft Article 3(2) is modelled after Article I of the Genocide Convention, the ILC directly drew on the International Court of Justice’s (ICJ) jurisprudence concerning the obligation to prevent genocide⁷³ in order to clarify the content and scope of the obligation to prevent crimes against humanity.

However, Amnesty International believes that the ILC did not afford enough weight to two key aspects of the ICJ’s jurisprudence which may be applicable to Draft Article 3(2). First, the ICJ has held that the obligation to prevent genocide is already triggered when a state has, or should have, knowledge that a “serious risk” exists that genocide will be committed.⁷⁴ Secondly, a state is obliged to prevent genocide not “limited by territory” but “wherever it may be acting or may be able to act”,⁷⁵ based on its “capacity to influence effectively” (see above). It is Amnesty International’s view that these aspects of the ICJ’s jurisprudence should apply by analogy to the obligation to prevent crimes against humanity under Draft Article 3(2).⁷⁶ Furthermore, the wording and drafting history of Draft Article 3(2) make clear that a state must prevent crimes against humanity both committed by its agents or by other persons under its jurisdiction, as well as by *other* states or persons. Amnesty International suggests that this understanding should be clarified with regard to Draft Articles 3(2).

4.2 THE IMPLEMENTING OBLIGATION OF PREVENTION (ARTICLE 4)

Draft Article 4, in turn, sets out some non-exhaustive *specific* measures that states must adopt to fulfil their duty under Draft Article 3(2), in terms of “legislative, administrative, judicial or other appropriate preventive measures” (lit. (a)) and “cooperation with other States, relevant intergovernmental organizations, and, as appropriate, other organizations” (lit. (b)).

Amnesty International welcomes the language included in Draft Article 4(a), which reproduces almost *verbatim* Article 2(1) of the widely ratified UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).⁷⁷ Under Draft Article 4(a), states’ obligation to adopt preventive measures must be “effective” and constantly be reviewed to ensure such effectiveness in preventing crimes against humanity.⁷⁸

Amnesty International also welcomes the obligation of cooperation envisaged under Draft Article 4(b), which the ILC derived from both general and specific obligations to cooperate for promoting respect of human rights under the UN Charter as well as UN principles of international cooperation with regard to war crimes and crimes against humanity.⁷⁹ On the latter, Amnesty International recalls that the recently adopted Ljubljana-The Hague Convention⁸⁰ clarifies and cements obligations of states to

⁷² International Law Commission, Report on the Work of Its Seventy-First Session, UN Doc. A/74/10 (2019), para. 45, Commentaries, https://legal.un.org/ilc/texts/instruments/english/commentaries/7_7_2019.pdf, p. 49, para. 7 [emphasis added].

⁷³ ICJ, Case Concerning Application of the Convention on the Prevention and Punishment of the crime of Genocide (*Bosnia v. Serbia*), judgment, 26 February 2007, paras 430-431.

⁷⁴ ICJ, *Bosnia v. Serbia*, para. 431: “... a State’s obligation to prevent, and the corresponding duty to act, arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed”.

⁷⁵ ICJ, *Bosnia v. Serbia*, para. 183.

⁷⁶ This position is also supported by some states. See “ILC ‘Draft articles on Prevention and Punishment of Crimes Against Humanity’ – Comments and Observations of the Kingdom of the Netherlands”, 1 December 2023, p. 2, https://www.un.org/en/ga/sixth/78/cah/netherlands_e.pdf; “Comments and observations of the Argentine Republic on the draft articles of the International Law Commission on crimes against humanity”, 4 December 2023, p. 3, https://www.un.org/en/ga/sixth/78/cah/argentina_e.pdf

⁷⁷ UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted on 10 December 1984, entered into force 26 June 1987), 1465 UNTS 85: “Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”

⁷⁸ ILC Commentaries (previously cited), p. 58, para. 8.

⁷⁹ ILC Commentaries (previously cited), p. 61, para. 13.

⁸⁰ See above section 1.

cooperate with each other in investigations and prosecutions involving crimes under international law, and should be considered positively in future deliberations of this issue.

However, the organization recalls that the limitation of the obligation to take measures as per Draft Article 4 lit. (a) “in any territory under its jurisdiction” applies to any territory under a state’s *de jure* or *de facto* jurisdiction;⁸¹ that no such territorial limitation extends to the general obligation under Draft Article 3(2) or for the obligation to cooperate under Draft Article 4(b); and that in Amnesty International’s view this obligation extends to all persons over whose enjoyment of human rights a state exercises power or effective control.⁸²

Recommendation:

- States should maintain the text of Draft Articles 3(2) and 4.

5. ESTABLISHMENT AND EXERCISE OF JURISDICTION

The Draft Articles oblige states to establish national criminal jurisdiction over crimes against humanity (Draft Article 7) and, if evidence so warrants, to take a suspected perpetrator present in any territory under its jurisdiction “into custody or take other legal measures to ensure his or her presence” (Draft Article 9) and to prosecute or extradite them (Draft Article 10).

5.1 NO JURISDICTIONAL HIERARCHY

Draft Article 7(1) provides that states parties must establish jurisdiction over crimes against humanity based on territoriality (where a crime has been committed), active personality (nationality of the suspect) and, if the state considers it appropriate, passive personality (nationality of the victim). Draft Article 7(2) provides that each state shall also take the necessary measures to establish its jurisdiction over crimes against humanity in cases where a suspect “is present in any territory under its jurisdiction and it does not extradite or surrender the person” concerned. Draft Article 7(3) provides that the draft articles “do not exclude the exercise of any criminal jurisdiction established by a State in accordance with its national law”.⁸³

Draft Article 7 aligns with existing international law, including the CAT (Article 5), the CPED (Article 9), and the Ljubljana-The Hague Convention (Article 8).⁸⁴ In line with these and other treaties, Draft Article 7 does not indicate that one basis of jurisdiction – such as territorial, active personality or passive personality – is to be preferred over another, meaning no hierarchy exists among the various bases of jurisdiction under Draft Article 7(1). The absence of any such hierarchy has been reiterated by domestic case law, expert opinions and academic commentary.⁸⁵

5.2 THE OBLIGATION TO PROSECUTE OR EXTRADITE

The absence of hierarchy among the various bases of jurisdiction is further confirmed by Draft Article 10, which incorporates the *aut dedere aut judicare* principle without providing for a preference as to any of the jurisdictional principles. This obligation is also independent of any extradition offers to or requests by other states. In line with established treaty law⁸⁶ and international and national jurisprudence,⁸⁷ prosecution under Draft Article 10 is an obligation, while extradition or surrender is an option left to states to meet their obligation under this provision. Under international law, a state in

⁸¹ ILC Commentaries (previously cited), p. 60, para. 12; see also: UN Committee against Torture: “The Committee considers that the scope of “territory” under article 2 must also include situations where a State party exercises, directly or indirectly, *de facto* or *de jure* control ... “ (General Comment 2, para. 16).

⁸² See UN Human Rights Committee, *General Comment 36 – Article 6: right to life* (2019), UN Doc. CCRPR/C/GC/36, para. 63.

⁸³ For example, protective or security jurisdiction or universal jurisdiction without the requirement of the suspect’s presence.

⁸⁴ See above section 1.

⁸⁵ For references, see Amnesty International, *Establishment and exercise of criminal jurisdiction in a future Convention on Crimes Against Humanity*, 12 March 2024 (Index: IOR 40/7780/2024), <https://www.amnesty.org/en/documents/ior40/7780/2024/en/>

⁸⁶ Including CAT (Article 7), CPED (Article 11), the Ljubljana-The Hague Convention (Article 14) and Articles 49, 50, 129 and 146 of the 1949 Geneva Conventions I-IV, respectively. For a full list, see ILC, Second report on crimes against humanity, by Sean D. Murphy, Special Rapporteur, 21 January 2016, UN Doc. A/CN.4/690, paras 158-159.

⁸⁷ ICJ, *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, judgment, 20 July 2012, paras 94-95; UN Committee against Torture, Decision: *Suleymane Guengueng et al. v. Senegal*, adopted on 19 May 2006, UN Doc. CAT/C/36/D/181/2001, para. 9.7; Court of Appeal of England and Wales, *KL v. Regina*, Case EWCA Crim. 1729, 7 August 2014, para. 71(4).

any territory under whose jurisdiction a suspected perpetrator is found may open a criminal investigation without having to offer, grant, or wait for requests of extradition to other states.⁸⁸

5.3 THE OBLIGATIONS TO NOTIFY AND CONSULT

To mitigate any potential competing claims for prosecution, should they ever arise,⁸⁹ the Draft Articles envisage avenues of cooperation when multiple states may intend to initiate criminal proceedings against a person suspected of crimes against humanity. The duty to notify all states with potential jurisdiction “of the fact that such person is in custody and of the circumstances which warrant his or her detention” (Draft Articles 9(3)) allows those states, including states that can exercise territorial or active personality jurisdiction, to submit extradition requests. As applicable, a prosecuting or custodial state must “give due consideration” (Draft Article 13(12)) to these and consult with the requesting State (Draft Article 13(13)).

While no obligation exists to comply with extradition requests,⁹⁰ Draft Articles 9(3) and 13(12)-(13) provide a sufficient avenue to address cases of potentially competing exercises of jurisdiction and allow all states interested in bringing genuine criminal proceedings against a suspect to make their case about who is best placed to proceed with a particular prosecution (*forum conveniens*).

Recommendation:

- States should maintain the text of Draft Articles 7, 9(3), 10 and 13(12)-(13) and reject attempts to undermine these provisions.

6. JUSTICE FOR CHILDREN

The future Convention should effectively recognize crimes against children to ensure better prevention, protection, justice, truth and reparation for child victims of crimes against humanity.

Children are not only incidental victims – they are frequently and deliberately targeted. Furthermore, the gravity, scale and effects of such crimes committed against them, and the additional human rights safeguards that apply, justify strengthening children’s protection. Both as victims and witnesses, the resulting harm to children’s physical, psychosocial and emotional development is often more severe and long-lasting than for adults, affecting their whole lives and future. These crimes can also cause enduring economic hardship and social exclusion.

Amnesty International supports the inclusion of child-specific provisions in a future Convention to increase the visibility of crimes affecting children, and to improve the likelihood that prosecutors will pursue related charges. The organization has endorsed a number of respective recommendations put forward by a broad civil society coalition working to increase justice for children.⁹¹ These are in line with the general principles recognized in the Convention on the Rights of the Child, as well as the UN Secretary-General’s Guidance Note on Child Rights Mainstreaming⁹² and the ICC’s Office of the Prosecutor’s 2023 Policy on Children, both adopted in 2023.⁹³

Among others, the recommendations include recognizing children as a special victim group in the preamble and a definition of a child as any person below the age of 18 without exception; adding age as a specific ground in relation to the crime of persecution (as well as making it an autonomous

⁸⁸ For references, see Amnesty International, *Establishment and exercise of criminal jurisdiction* (previously cited).

⁸⁹ To date, Amnesty International is not aware of any actual dispute between states genuinely eager to try the same persons suspected of criminal responsibility for crimes against humanity.

⁹⁰ ILC Commentaries (previously cited), p. 119, para. 29: “... a State may decline to extradite for any reason, so long as it submits the case to its own competent authorities for the purpose of prosecution”.

⁹¹ Children and Crimes Against Humanity Coalition, *Justice for Children in the Future Convention on the Prevention and Punishment of Crimes Against Humanity*, May 2025, <https://cahtreatynow.org/justice-for-children-in-the-future-convention-on-the-prevention-and-punishment-of-crimes-against-humanity/>; see also Zama Neff and others, “Justice for Children in a Future Crimes Against Humanity Treaty”, Just Security, 19 May 2025, <https://www.justsecurity.org/113376/justice-children-future-crimes-against-humanity-treaty/>

⁹² United Nations, “Guidance Note of the Secretary-General, Child Rights Mainstreaming”, July 2023, <https://www.ohchr.org/en/documents/tools-and-resources/guidance-note-secretary-general-child-rights-mainstreaming>

⁹³ International Criminal Court, Office of the Prosecutor, *Policy on Children*, December 2023, <https://www.icc-cpi.int/sites/default/files/2023-12/2023-policy-children-en-web.pdf>

crime);⁹⁴ and codifying existing jurisprudence explicitly recognizing forced marriage as a separate enumerated crime against humanity.⁹⁵

In addition, the future Convention should ensure the children's right to participate in legal proceedings in a manner that is accessible, safe and fair, in accordance with their age, maturity and best interests; ensure persons under 18 accused of committing crimes against humanity are not prosecuted in adult criminal justice systems; adopt a definition of "victims" broad enough to encompass direct and indirect child victims, including children born from sexual violence;⁹⁶ and recognize children's right to access justice and child-focused reparations measures.

Recommendation:

- **The future Convention should include a definition that a child is anyone under the age of 18; expressly recognize that crimes against humanity are committed against them, including persecution and forced marriage; and provide for their access to justice, protection and reparations.**

7. SETTLEMENT OF DISPUTES

Draft Article 15(1) provides that states parties are to attempt to settle disputes concerning the interpretation or application of the Convention through negotiations. If these fail, states may submit the dispute to the International Court of Justice (ICJ), unless they agree to submit the dispute to arbitration (Draft Article 15(2)) or one has opted out of ICJ jurisdiction entirely (Draft Article 15(3)-(4)).

To prevent protracted negotiations under Article 15(1) and react with urgency to any situation allegedly involving crimes against humanity, Amnesty International recommends the inclusion in Article 15(2) of a strict time limit for negotiations, after which the option to submit the dispute to the ICJ should be open. Where negotiations do not lead to a settlement of a dispute, discussions about potential arbitration should not be allowed to delay the commencement of the judicial dispute further.

A strict time limit for negotiations is needed and three to six months are common in the case of inter-state disputes concerning crimes under international law.⁹⁷ Amnesty International recommends following the example of Article 119(2) of the Rome Statute for a strict and short time limit, given the presumed urgency of any relevant situation. In any event, states parties should not be allowed to evade or make dispute settlement ineffective – especially if the avoidance of a primary treaty obligation is the focus of the dispute – by prolonged procedural discussions about negotiations, arbitration or settlement by the ICJ.

Draft Article 15(3) is an opt-out provision related to the jurisdiction of the ICJ over disputes concerning the interpretation or application of the future Convention. Amnesty International recommends deleting paragraphs 3 and 4 of Draft Article 15. Acceptance of the ICJ's jurisdiction over such disputes should be compulsory in cases in which negotiations fail, and the dispute is not submitted to arbitration.

Recommendation:

- **Draft Article 15 should be revised in a way that ensures prompt and effective access to its dispute settlement process, including a strict time limit on negotiations, and compulsory acceptance of ICJ's jurisdiction.**

⁹⁴ See section 3.3.1. above.

⁹⁵ See section 3.1.3. above.

⁹⁶ See section 2.2 above.

⁹⁷ A time limit of three months for negotiations is included in Article 119(2) of the Rome Statute, without the option of arbitration. Six months, with some variations, are prescribed by Article 86(2) of the Ljubljana-The Hague Convention (see above section 1); Article 42(1) of the CPED; and Article 30(1) of the CAT.

III. LIST OF AMNESTY INTERNATIONAL PAPERS PUBLISHED ON THE DRAFT ARTICLES ON PREVENTION AND PUNISHMENT OF CRIMES AGAINST HUMANITY SINCE 2014

- Initiative to draft new convention on crimes against humanity, new chance to strengthen fight against impunity, www.amnesty.org/en/documents/ior51/001/2014/en/
- International Law Commission: Initial Recommendations for a Convention on Crimes Against Humanity, www.amnesty.org/en/documents/ior40/1227/2015/en/
- International Law Commission: Second report on crimes against humanity: positive aspects and concerns, www.amnesty.org/en/documents/ior40/3606/2016/en/
- Joint letter to the International Law Commission Special Rapporteur on crimes against humanity, www.amnesty.org/en/documents/ior53/3512/2016/en/
- International Law Commission: Commentary to the Third Report on crimes against humanity, www.amnesty.org/en/documents/ior40/5817/2017/en/
- Joint letter to the Special Rapporteur of the International Law Commission on Crimes Against Humanity, www.amnesty.org/en/documents/ior53/5579/2017/en/
- Amnesty International conditional support to the Draft Articles on Crimes against Humanity adopted by the International Law Commission in first reading, www.amnesty.org/en/documents/ior40/7328/2017/en/
- 17-Point Program for a Convention on Crimes against Humanity, www.amnesty.org/en/documents/ior51/7914/2018/en/
- The problematic formulation of persecution under the Draft Convention on crimes against humanity, www.amnesty.org/en/documents/ior40/9248/2018/en/
- UN: Time has come to turn the Draft Articles on Prevention and Punishment of Crimes against Humanity, duly amended, into a UN Convention: Public statement, www.amnesty.org/en/documents/ior40/3150/2020/en/
- General Recommendations to States for a Convention on Prevention and Punishment of Crimes against Humanity, www.amnesty.org/en/documents/ior40/6497/2023/en/
- Establishment and exercise of criminal jurisdiction in a future Convention on Crimes Against Humanity, www.amnesty.org/en/documents/ior40/7780/2024/en/
- International Justice Day and Days to Come: The Rome Statute of the ICC and a future Convention on Crimes against Humanity – Complementarity, not Competition, www.amnesty.org/en/documents/ior40/8247/2024/en/

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